

Town of




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**AMHERST** Massachusetts

Amherst Police Department  
111 Main Street  
Amherst, Massachusetts  
01002

Scott P. Livingstone  
Chief of Police  
Business (413) 259-3000  
Chief (413) 259-3014  
Records (413) 259-3016  
Fax (413) 259-2408  
police@amherstma.gov

**DEPARTMENT DIRECTIVE**

Accreditation Standard #	<b>NUMBER: 63</b>
<b>SUBJECT: INTERNAL AFFAIRS</b>	<b>AUTHORIZED SIGNATURE:</b>  <b>SCOTT P. LIVINGSTONE, CHIEF OF POLICE</b>
<b>Date of Issue:</b> <u>05/14/2010</u> <b>Effective Date:</b> <u>05/24/2010</u>  <b>Subsequent Reviews:</b> every 2 yrs.	New _____ Amends <u>x</u> Rescinds _____ Directive #:63

**PURPOSE:** This General Order indicates that a review was completed on the **INTERNAL AFFAIRS** policy. It was found that revisions were needed. This policy will remain in effect until further notice.

The Administrative Division will see that this cover sheet will be placed in all Departmental Policy and Procedure Manuals.

## **INTERNAL AFFAIRS**

### **I. POLICY PURPOSE**

A relationship of trust and confidence between the employees of this police department and the citizens of the community is essential to the successful accomplishment of law enforcement objectives. All police employees are expected to conduct themselves, whether on or off duty, in such a manner as to reflect favorably upon themselves and the Department. The consistently high quality of this standard of conduct establishes and maintains the reputation of the Department and encourages the support of the community for police purposes and goals.

The internal affairs function is important for the maintenance of professional conduct in a law enforcement agency. The integrity of the Department depends on the personal integrity and discipline of each employee. To a large degree, the public image of this Department is determined by the quality of Internal Affairs investigations responding to allegations of misconduct against the Department, officers and/or civilian employees.

The primary responsibility of the Internal Affairs function is to respond to allegations of misconduct against the police department and its employees. An officer assigned to complete an Internal Affairs investigation will be responsible for recording, registering, and controlling the investigation of complaints against the Department or employees; supervising and controlling the investigation of alleged misconduct within the Department; and, maintaining the confidentiality of internal affairs investigations and records. A proper Internal Affairs investigation will ensure that the integrity of the Department is maintained through an internal system where objectivity, fairness, and justice are assured by intensive and impartial investigation and review.

Since an Internal Affairs investigation involves allegations against the Department or member of the Department, it is essential that the process not only be lawful, but confidential as well. This necessitates strict confidentiality and full adherence to procedure. The objectives of an Internal Affairs investigation are:

1. Protection of the public;
2. Protection of the employee;
3. Protection of the Department;
4. Removal of unfit personnel;
5. Correction of procedural problems.
6. Address training deficiencies



## **II. POLICY STATEMENT**

It is the policy of this Police Department to investigate all complaints against the Department or a member of the Department, regardless of the source of such complaints, through a regulated, fair, and impartial Internal Affairs Program. {52.1.1}.

All alleged or suspected violations of laws, ordinances, by-laws, department rules, regulations, policies, procedures, and orders (verbal or written), must be investigated according to the procedures outlined for each. These include:

1. Alleged violations reported to the Department's superior officers by other members of the Department, either orally or in writing;
2. Alleged violations, observed or suspected, by Department superior officers;
3. Citizens' complaints of alleged police misconduct which are made in person, by letter, by telephone, or anonymously (includes prisoner complaints).
4. Citizens' complaints *against the Department* include Departmental misconduct (misfeasance) or the manner in which the Department responded to a community need (malfeasance or nonfeasance)

## **III. PROCEDURES**

### **A. COMMAND:**

The responsibility for supervising, conducting, coordinating, and maintaining the Internal Affairs function of the Department lies with the Administrative Captain who shall report directly to the Chief of Police. All findings will be prepared in writing and presented to the Chief of Police with a recommendation for disposition {52.1.3}

### **B. COMPLAINT REPORT FORM:**

1. A standard complaint report form should be used to record all complaints of misconduct, mistreatment, or unethical practices against the Police Department or personnel, whether registered by a citizen, initiated from within the police department, or forwarded by another governmental agency. Formal complaint forms can be obtained at the Amherst Police Department, the Town Managers Office at Town Hall, and at the Office of the Human Rights Director at the Town Hall.

The following information shall be included on the complaint report form:

- a. Date and time of complaint report;
- b. Name, address, and telephone number of the complainant;
- c. Name, address and telephone numbers of any witnesses to the reported incident;
- d. Name, rank, badge number (or description) of the employee against whom the complaint is made;
- e. Date, time and location of the reported incident;
- f. Complainant's description of the incident which resulted in the complaint;

- g. Signature of complainant;
- h. Signature of parent or guardian if complainant is under eighteen years of age;
- i. Date and time the Chief of Police received the complaint.

## **C. RECEIVING AND RECORDING COMPLAINTS**

1. The officer-in-charge of the station at the time the complaint is made shall be responsible for the efficient receiving and complete recording of any complaint of department or police employee misconduct made by a citizen in person or received by telephone. If the officer in charge of the station is a patrol officer, he/she shall contact the Shift Commander who shall attempt to speak with the complainant. Whether the complaint is received in person, or over the telephone, the Shift Commander is responsible that a CAD coded Civil Complaint is initiated, which will serve as verification that the complaint has been received. {52.1.2}. All documentation will be forwarded to the Chief of Police without delay. {52.2.2}
2. Courtesy and cooperation should be extended to all citizens registering complaints or otherwise inquiring about complaint procedure.
3. This initial contact between a complaining citizen and police authorities is a most important stage in the complaint process as the complainant is often tense, angry, and emotionally upset, and the potential for hostility is great.
4. No person should be denied an opportunity to register a complaint, nor should any such person be directed to return or call back later. If the complainant is intoxicated, the complaint should be recorded and the complainant advised to return at a later date.
5. Every complaint report form shall be given an identifying number, so that the processing of complaints can be carefully monitored. The Captain of Administration will assign this identifying number.
6. Citizens making complaints in person should be requested to read over their complete report, to make any necessary corrections or additions and to sign their complaint. Once the formal complaint sheet is filled out and received by the Department, the time and date of arrival at the Department will be noted, and a copy made for the complainant as receipt verifying the complaint has been received.
7. If a complainant refuses to sign a complaint form, a notation to that effect should be made of the complaint form.
8. Citizens making complaints by telephone should be informed that their signed complaint is requested; however, no telephone complaint should be refused or rejected because the complainant does not wish to sign a complaint form or because he/she does not wish to be identified. A CAD Civil Complaint shall be initiated {52.1.2} and the information forwarded to the Chief of Police.
9. No complaint should be rejected solely because it is anonymous, as anonymous complaints can often be a valuable source of information and should be considered on their individual merits. Care must be taken, however,



that the Department employees are not subject to unjust, frivolous, or capricious complaints

10. **Complaints Received by Mail:** If a complaint of misconduct or mistreatment by the department or an employee is received by mail or email, the complaint will be forwarded to the Administrative Captain. The allegations shall be incorporated in a standard complaint form and the original communication attached thereto. A CAD Civil Complaint shall be initiated. If the information so received is insufficient or incomplete the complainant shall be contacted, if possible, and informed of the Department complaint procedure and any necessary additional information obtained. {52.1.2} In any case, The Chief of Police will be notified.
11. **Departmental Complaints:** Formal departmental complaints of misconduct against a department employee shall be initiated by the preparation of a formal letter submitted through the chain of command. The Chief of Police shall be made aware of all formal departmental complaints.
12. **Complaints by Prisoners:** Any prisoner who alleges misconduct or mistreatment by a department employee shall be advised by the Officer-in-Charge of the station of his/her rights to submit a complaint report form in the usual manner and such complaints should be investigated and processed in the same manner as other citizens complaints.
13. **Complaints from Governmental Agencies:** When information is received or obtained from other governmental agencies alleging specific acts of misconduct against a department employee, this information shall be recorded on a standard complaint report form and an investigation initiated in the usual manner.
14. **Street Complaints:** If an officer on the street is approached by a citizen regarding a complaint of alleged misconduct against an employee of the police department, the officer shall inform such person that his or her complaint should be directed to the Officer-in-Charge of the station.
15. **Command Notification:** If the substance of a complaint would be of a grave nature or is an accusation of a serious crime and immediate action is deemed necessary, the Chief, or the superior officer designated by the Chief, shall be notified forthwith in order that an investigation can be initiated without delay. {52.2.2}
16. **Immediate Resolution of a Complaint:** In some cases a complaint can be resolved to the complainant's satisfaction at the time by the Shift Commander.
  - a. This immediate resolution can often be accomplished if the incident is clearly not of a serious nature, or arises from a misunderstanding or lack of knowledge of the law or limitations of a police officer's authority.
  - b. If a complaint that arose from misunderstanding or lack of knowledge of the law was resolved by the shift commander, a notation will be made by the Shift Commander in his/her own file, however, no formal complaint form should be filed

#### **D. CATEGORIES OF COMPLAINTS**

1. The Department has established guidelines regarding which categories of complaints will be handled and investigated by a formal internal investigation and which by a shift supervisor, as part of routine discipline. The criteria for determining the categories of complaints to be investigated and/or reviewed by Internal Affairs Investigation include, but are not limited to, allegations of :
  - a. corruption;
  - b. brutality;
  - c. use of excessive force;
  - d. violation of civil rights; and
  - e. criminal misconduct. {52.2.1 b}
2. Criteria for the assignment of an investigation to a shift supervisor may include such offenses as:
  - a. alleged rudeness;
  - b. tardiness; and
  - c. insubordination.{52.2.1 a}

#### **E. NOTIFICATIONS AND ASSIGNMENT**

1. The Chief of Police will forward to the Administrative Captain complaints of misconduct for overall responsibility, supervision, and assignment of the internal investigation to an Investigating Officer. The Investigating Officer is responsible to complete the internal investigation and shall report directly to the Chief of Police.{52.1.3} The Administrative Captain will confirm that the Operations Captain and other supervisors are given notice of the internal investigation and forthcoming conclusion.
2. The Administrative Captain will send a letter to the complainant, acknowledging the receipt of the allegations, identifying the Investigating Officer, the anticipated completion date of the investigation, and their option to request periodic status reports.{52.2.4 a/b/c}
3. The Administrative Captain will forward a copy of the complaint and other correspondence to the assigned Investigating Officer. The originals will be maintained locked in a secure location within the control of the Chief of Police.
4. Any Internal Affairs investigation must be commenced immediately upon receipt of the complaint and must be completed within fourteen (14) days after



the Investigating Officer has made contact with the complainant, unless extenuating circumstances exist. In such instances, these circumstances shall be documented {52.2.3} and the Investigating Officer shall notify the Chief of Police in writing of those circumstances.

5. The Investigating Officer shall be responsible for providing the Chief of Police with status reports on the progress of the investigation every five (5) days. These reports shall contain all pertinent information relating to the progress of the investigation. At the complainant's request, the Administrative Captain or the Investigating Officer will attempt to update the complainant as to the status of the investigation every seven (7) days. {52.2.4 b}
6. When an employee is notified that they have become the subject of an internal affairs investigation and before he/she is questioned or directed to submit a report regarding a complaint, such employee shall be issued by the Investigating Officer, a written statement of the allegations, which will include the classification of offense or violation of rule, as alleged (i.e., Improper Conduct, Neglect of Duty, Use of Force Policy Violation etc) and the employee's rights and responsibilities relative to the investigation.
7. The Chief of Police shall notify the employee and complainant in writing of the results of the internal investigation within seven (7) days after the completion of the investigation.

#### **IV. INVESTIGATIVE PROCEDURES:**

##### **A. INVESTIGATION OF COMPLAINTS**

An internal administrative investigation may inquire into a department employee's on-duty or off-duty conduct if such inquiry is responsibly and directly related to the employee's performance of duty, if such conduct affects the employee's fitness or ability to continue in the police service, or discredits the Department.

1. Criminal Proceedings: If it is determined, after a preliminary investigation, that allegations against a department employee could result in a criminal prosecution, the accused employee must be granted all applicable constitutional and statutory rights.
  - a. Prior to being questioned regarding alleged personal involvement in criminal activity, a department employee who is under arrest, or who is the target of a criminal investigation, shall be given the warnings and rights required by the Miranda decision, including the rights to have an attorney present during any such questioning.

- b. If this procedure is followed, any voluntary statement made thereafter could be admissible in a criminal proceeding, and it may otherwise be used for departmental disciplinary purposes.
  - c. A department employee who is being questioned about alleged personal involvement in criminal prosecution, cannot be discharged, otherwise penalized, solely for invoking the right to remain silent as guaranteed by the Fifth Amendment or for refusing to sign a waiver of immunity. However, as discussed below, an employee may be compelled to answer questions narrowly drawn and related to his/her on or off duty conduct, and may be disciplined (including discharge) for failure to answer truthfully.
- 2. Departmental Disciplinary Action: If it is determined as a result of preliminary investigation, that allegations made against a department employee could result in departmental disciplinary action, the accused employee is entitled to a fair and objective investigation and resolution of the charges made.
- 3. All department employees, when requested by the Chief, or by a superior officer designated by the Chief, must respond fully and truthfully to all questions regarding their performance of official duties or their off-duty misconduct which affects their fitness or ability to remain in the police service, and any failure to answer completely and truthfully to such inquiries may be punished by appropriate disciplinary action, including dismissal from the Department.
  - a. The official conducting the interrogation must, at the time of the interrogation, specify to the employee being questioned the precise repercussions (i.e., suspension, discharge, or the exact form of discipline) that may result if the officer fails to respond.
- 4. In the normal course of duty, officers are required to prepare reports of incidents and submit same in accordance with department policy and procedure. However, when a department employee is ordered to answer questions about a specific incident, that employee receives transactional immunity from criminal prosecution for any offenses to which the compelled testimony relates.
  - a. The Supreme Judicial Court has held that Article 12 of the Massachusetts Declaration of Rights requires “transactional” immunity to supplant the privilege against self-incrimination when a public employee is being compelled to answer questions concerning possible criminal activities connected with his employment. Transactional immunity grants “immunity from prosecution for offenses to which compelled testimony relates.”



- b. If the questions specifically, directly, and narrowly relate to the employee's performance of official duties or his/her off-duty conduct which affects his/her fitness or ability to remain in the police service, and if such employee is informed that he/she will receive transactional immunity from criminal prosecution, he/she must answer or face disciplinary action, including dismissal from the Department, for refusing to answer such questions.
- 5. No double jeopardy exists when a department employee is found not guilty in court of criminal charges and is then found guilty of departmental charges after disciplinary hearing, as the department charges are administrative in nature and can be sustained by a "preponderance of the evidence" rather than the criminal court standard of "beyond a reasonable doubt."
- 6. In conducting internal administrative investigations, a request for an attorney or an employee representative to be present will be granted if the investigation is not thereby unduly delayed. Employees and Officers have this right to representation when he/she reasonably believes their action will result in disciplinary action.
  - a. Except in unusual situations, any interview or questioning should take place during the employee's regular duty hours.
  - b. Any interview or questioning should not be prolonged without reasonable rest periods and the opportunity for meals and such other personal necessities as are reasonably required.
  - c. A department employee shall not be improperly harassed or threatened during this period of questionings.
- 7. In conducting an investigation of alleged employee misconduct, all appropriate investigation techniques and methods should be employed, consistent with legal requirements and all necessary concern for the individual rights of the accused employee.
  - a. An internal administrative investigation should be conducted with the same degree of professional competence as is devoted to a criminal investigation.
  - b. Upon orders of the Chief of Police or his designee, an employee may be required to submit to a medical or laboratory examination, at the Department's expense. This examination must be specifically directed and narrowly related to a particular internal affairs investigation being conducted by the department. {52.2.6 a}

- c. A police officer or other employee may also be required to be photographed and can be compelled to stand in a lineup for identification in connection with an administrative investigation, and refusal can be the basis for an additional disciplinary charge of refusal to obey a lawful order. Such a lineup should be fairly constructed and not unfairly suggestive investigation where criminal charges are contemplated. {52.2.6 b/c}
  - d. A police officer's or other employee's personal property, including his home, car, and other property, is protected from unreasonable search and seizure under the Massachusetts Constitution, and any evidence illegally obtained may not be used as evidence in any administrative proceeding. Department property furnished to the officer or other employee, such as desks, lockers, computers, other electronic devices, or vehicles, in which it is clearly understood in advance that an officer has "no expectation of privacy", may be searched without a warrant.
  - e. A police officer or other employee may be compelled to submit a financial disclosure statement as part of an internal affairs investigation. If such a statement is requested, the Department shall show the relevance of such statement in writing, ask only for relevant and specific items, and allow a reasonable amount of time for submission. {52.2.6 d}
  - f. Under the provisions of M.G.L. c. 149, s. 19B, police officers or other employee may be required to submit to a polygraph or lie detector test in connection with an internal administrative investigation if such test is conducted by a law enforcement agency in the course of a departmental investigation of criminal activity, and under such circumstances, police officers or other employees may face disciplinary action for refusal. It should be noted that Article 12 rights apply here. {52.2.6 e}
8. If possible, the complete interview with an employee in all internal administrative investigation should be recorded mechanically or by a qualified stenographer.
9. Withdrawn Complaints: If during the progress of an internal investigation, the complainant indicates a desire to withdraw the complaint, every effort should be made to ensure that this decision is made voluntarily, and a signed statement to this effect should be obtained from the complainant.
- a. Even though a complaint is withdrawn, a full report of the investigation to date should be prepared for the Chief and his approval obtained for the termination of the investigation.
  - b. Any attempt, directly or indirectly, on the part of the department employee to obstruct any internal investigation or to threaten or



persuade any complainant to withdraw or abandon his complaint, is prohibited and will be treated most severely.

## **V. REPORT OF INVESTIGATION**

### **A.** At the conclusion of any administrative investigation, a full written report shall be prepared for submission to the Chief, which shall include the following:

1. the original complaint report;
2. any additional statements taken from the complainant or statements obtained from witnesses;
3. documentation confirming employee received notice of allegations, rights and responsibilities as required in section IV/B/6.
4. any statement made or reports submitted by the department employee under investigation;
5. a summary of all evidence gathered;
6. any mitigating circumstances;
7. an evaluation of the complaint and a “conclusion of fact” as to whether the charges made by the complainant were: {52.2.8}
  - a. valid and supported by sufficient evidence;
  - b. unsustained because of inadequate or insufficient evidence;
  - c. unfounded as the allegations were baseless and without foundation;
  - or
  - d. unjustified or unwarranted as the actions of the accused department employee were in compliance with law or in accordance with Department policy and procedure.

### **B.** The Administrative Captain insures that all records and reports of such investigations are maintained in a secure area in order to ensure confidentiality. {52.1.2}

### **C.** Upon receipt of the report of investigation, the Chief should take further action as is necessary based upon findings in the particular case.

1. Every person who has filed a complaint against an employee shall be notified promptly as to the final results of the investigation, personally if possible or otherwise by mail. Documentation of these correspondences will be made part of the secure internal investigation file.

2. If a disciplinary hearing is deemed necessary, the complainant shall be notified that his/her testimony may be required at that time.
3. If the department employee is cleared of the charges made, he/she shall be officially exonerated in writing. Documentation of these correspondences will be made part of the secure internal investigation file.
4. The complete summary investigation (see VII/B) will be completed by the Administrative Captain, original filed, with copies to all affected and appropriate Command Staff.

#### **D. CONFIDENTIALITY OF INTERNAL AFFAIRS**

In order to ensure that the individual rights of employees who are the subject of an Internal Affairs investigation are protected, all materials relevant to that investigation shall be kept strictly confidential and under lock and key by the Investigating Officer of the investigation, and the Office of the Chief of Police which maintains the completed original file in its entirety. No statement regarding an Internal Affairs investigation will be made or issued to the media unless the charges have been sustained and action has been taken or initiated against the officer or employee. This will only be done with the permission of the Chief of Police.

#### **E. INVESTIGATIVE FILES**

1. A complete file of records on the investigation of all citizens and internal complaints shall be kept in the office of the Chief of Police. These files shall contain supporting investigative information, as well as notes taken during the investigation. These files shall be treated as confidential investigative files and shall include what disciplinary action was taken if any..
2. A copy of the complete investigation summary should be kept in a summary file in the office of the Chief of Police and will be the only source of public information about citizen complaints.
3. Officers or employees will have access to their own internal affairs files on all completed investigations. {26.1.8}

#### **VI. LIAISON WITH DISTRICT ATTORNEY:**

Any Internal Affairs investigation which may, or does, result in criminal charges being brought against an officer shall require the District Attorney's office to be appraised of the case for the purpose of advising on legal issues and ultimate prosecution, if necessary. Contact shall be made through the Captain of Administration.



## **VII. RELIEVING EMPLOYEE FROM DUTY:**

No officer or employee shall be relieved from duty as a result of an Internal Affairs investigation unless such action is in accordance with the collective bargaining agreement between the Amherst Police League and the Town of Amherst, any other collective bargaining agreement between the affected personnel and the Town of Amherst, the Rules and Regulations for the Government of the Amherst Police Department, Amherst Police Policy and Procedure #75 *Discipline*, Town of Amherst Personnel Manual and subject to the provisions of state and federal anti-discrimination laws. All disciplinary action shall be according to these documents.

## **VIII. RELIEF FROM DUTY - RIGHTS OF COMMANDERS: {52.2.7}**

The Commanding Officer of any Shift or Section within the organization of the Amherst Police Department may relieve, with pay, any officer or employee under his/her command for the balance of the assigned Shift only if said Commanding Officer has determined that the officer or employee is unfit or unable to perform or carry out his/her assigned duties or responsibilities. {26.1.5/52.2.7} In all cases, the Chief of Police will immediately be notified. This action may or may not occur as a result of a need for disciplinary investigation or action.

### **A. Examples of relieving for non-disciplinary reasons would be as follows:**

1. If the officer or employee is suffering from an illness and appears too sick to work effectively or safely.
2. If the officer or employee reports to work injured, is injured during the performance of duties and a physician advises that he/she be relieved, or is injured on duty and refuses to acknowledge the apparent danger the injury may place himself/herself in if remaining on duty.
3. The officer's or employee's mental state as the result of an unusual or traumatic situation presents a danger that duties and responsibilities may not be performed safely and properly.

### **B. Commanders may also relieve any officer or employee from duty, with pay, for the balance of the assigned shift only, for any infraction or violation of the Rules, Regulations, Policies, Procedures, or Orders of the Department. Specific examples but not be limited to, the following;**

1. Reporting to duty while under the influence of alcohol or controlled substances.

2. Insubordination.
3. Committing a criminal offense while on or off duty.
4. Falsifying a statement or record.
5. Abusing, stealing, damaging, destroying, or defacing property or equipment of the Department or others.<sup>1</sup>

Any Commanding Officer who relieves an officer or employee from duty for disciplinary reasons shall immediately file a **Report to the Chief** containing all details of the matter. This form will be left with the Commander's immediate superior, with copies going to the Chief of Police. Further investigation into the matter will be conducted in accordance with the procedures outlined previously in this Directive.

Any Commanding Officer who relieves an officer or employee from duty for non-disciplinary reasons shall file a complete written report on the details to his/her immediate superior, with copies going to the Chief of Police.

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<sup>1</sup> 52.1.8